

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

H&R BLOCK, INC. *et al.*,

Plaintiffs,

v.

Case No. 4:24-cv-198-BP

JAY L. HIMES, in his official capacity as
Federal Trade Commission Administrative Law
Judge, *et al.*,

Defendants.

JOINT RULE 26(f) REPORT

Pursuant to Federal Rule of Civil Procedure 26(f) and Local Rule 26.1(a) and the Court's order of April 23, 2024, the parties submit the following joint report.

1. Plaintiffs assert a single claim challenging the statutory removal protections for Federal Trade Commission (FTC) administrative law judges (ALJs). Compl. ¶¶ 30–33, ECF No. 1. Plaintiffs are subject to an administrative proceeding before an FTC ALJ, with a hearing scheduled to begin on October 24, 2024. In this action against Defendants—who consist of the ALJ presiding over the administrative proceeding and the Federal Trade Commissioners, all in their official capacities—Plaintiffs ask the Court to declare the ALJ removal protections unconstitutional and enjoin the ALJ's participation in the underlying administrative proceeding.

2. On March 20, 2024, Plaintiffs filed a motion for preliminary injunction, seeking declaratory and injunctive relief on an emergency basis. That motion was fully briefed on April 17 and remains pending.

3. Defendants' response to the complaint is due 21 days after the Court rules on Plaintiffs' motion for preliminary injunction or by May 31, 2024, whichever is later. Order, ECF No. 22.

4. Pursuant to the Court's order of April 23, 2024, the parties met and conferred by videoconference on May 22. Present at the conference were Hashim Mooppan and Stacey Gilman, attorneys for Plaintiffs, and Christine Coogle, attorney for Defendants. Settlement was discussed, but no agreement could be reached, and none is expected.

5. The parties agree that discovery is not necessary or appropriate in this case. The claim at issue involves purely legal questions of constitutional and statutory interpretation, does not turn on any issues of fact, and does not require the discovery of any particular facts in the parties' possession. If this case were to proceed to the adjudication of the merits, Plaintiffs' single claim may be appropriately resolved through cross-motions for summary judgment. No trial will be necessary or appropriate.

6. Accordingly, pursuant to Local Rule 16.1(d), the parties state that they do not anticipate the joinder of any parties; they do not anticipate any trial; and they do not believe that any discovery plan will be necessary or appropriate under Local Rule 26.1(c).

7. The parties further agree that setting deadlines for dispositive cross-motions for summary judgment pursuant to Local Rule 16.1(d)(2) is premature, in light of Plaintiffs' pending motion for preliminary injunction and Defendants' forthcoming response to the complaint.

8. Accordingly, the parties do not believe that any schedule for disclosure and discovery should be ordered in this case. The parties propose that the Court should set a schedule for cross-motions for summary judgment at a time after Defendants' response to the complaint, if necessary.¹

¹ The parties propose an approach that, by its nature, omits the proposal of a trial schedule as anticipated by the Court's order of April 23 and Local Rules 16.1 and 26.1. As such, in an abundance of caution, to the extent that the Court may require anything additional from the parties to comply with its April 23 order, the parties jointly request an extension or stay of such requirements pending further direction from the Court.

Dated: May 28, 2024

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